

LAFCO

Santa Barbara Local Agency Formation Commission

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August 6, 2020 (Agenda)

TO: Each Member of the Commission

FROM: William Dillon
Interim Executive Officer
LAFCO Legal Counsel

Subject: Municipal service review of the Isla Vista Community Services District (“District”) regarding District’s latent powers and services.

Recommendation.

Receive a report on the Municipal Service Review to be scheduled for the Isla Vista Community Services District and give direction to Staff regarding communications with the District regarding legal authority, next steps and schedule for the proposed MSR.

Discussion.

Former Executive Officer Paul Hood and Legal Counsel met with representatives of the District on February 26, 2020 to discuss issues associated with the municipal service review required by Condition 11 in Resolution of Formation No. 16-10. The purpose of the service review is for the Commission to determine which LAFCO authorized powers are not being exercised by the District and, if so, should be determined to be latent powers. The District has objected to this service review in a letter sent to the Executive Officer on January 22, 2020. (See **Attachment A.**)

The meeting with the District was productive and both the Executive Officer and Legal Counsel believe all issues can be resolved. To move the process forward, a District board member requested that the analysis of LAFCO’s Legal Counsel be made available to the District Board so they may better understand LAFCO’s position.

Legal Counsel has separately provided to the Commission a confidential memorandum dated July 13, 2020, regarding the service review required as a condition on the formation of the District. Legal Counsel also advises that while the mandate to hear the municipal service review is clear, the Commission will have considerable discretion in carrying out that review to work cooperatively with the District to achieve a result that satisfies both the District and LAFCO.

If the Commission authorized Legal Counsel to provide the confidential memorandum to the District, the anticipated next steps would be further discussions between LAFCO staff and the District and then, if discussions are productive, a hearing before the Commission would be

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scheduled to consider giving the District additional time to comply with the condition. The District has stated that it is still in the startup stages of exercising its powers and a review at this stage would be premature. The action to allow more time to perform a service review would be agendized for Commission consideration and approval in the next few months.

Please contact the LAFCO office if you have any questions.

Sincerely,



William M Dillon
Interim Executive Officer



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To: Paul Hood, Executive Officer, SB Local Agency Formation Commission
From: Jonathan Abboud, General Manager, Isla Vista Community Services District
RE: IVCSA Municipal Services Review

Dear Mr. Hood:

I am writing in response to your January 14, 2020 letter requesting information about the Isla Vista Community Services District ("District") active powers and services delivery. Below is a list of the current and planned future activities of the District and their alignment to active powers as set forth in Government Code 61250. Additionally, I have included information that responds to LAFCO's asserted purpose of the Municipal Services Review ("MSR") as a means by which to determine the District's active powers, for possible unilateral deactivation.

1. Finance the operations of municipal advisory councils formed pursuant to Section 31010.
 - a. The District is designing the Isla Vista Municipal Advisory Council's charge, scope, and/or jurisdiction, as well as the best potential composition before making a final request of the Board of Supervisors to form one.
2. Create a tenant mediation program.
 - a. The District operates the "Rental Housing Mediation Program." The District is collecting data on the current program implementation to measure effectiveness for possible future expansion.
3. Finance the operations of area planning commissions formed pursuant to Section 65101.
 - a. The District is working with Supervisor Joan Hartmann regarding the best date to form the Isla Vista Area Planning Commission to coincide with the creation of a community plan, in line with the recently approved Board goals.



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4. Exercise the powers of a parking district, in the same manner as a parking district formed pursuant to the Parking District Law of 1951 (Part 4 (commencing with Section 35100) of Division 18 of the Streets and Highways Code).
 - a. The District oversees operations of the 970 Embarcadero Del Mar parking lot and is in negotiations regarding the 976 Embarcadero Del Mar parking lot. Additionally, the District has engaged the County in discussions about a transfer of control of the solar parking lot at 881 Embarcadero Del Mar. Further, the District has started conceptual planning of a broader approach to addressing parking issues in Isla Vista.
5. Contract with the County of Santa Barbara or the Regents of the University of California, or both, for additional police protection services to supplement the level of police protection services already provided by either the County of Santa Barbara or the Regents of the University of California within the area of the district.
 - a. The District contracts with the University of California to operate the Isla Vista Safety Stations and hire the Isla Vista Interpersonal Violence Investigator.
6. Acquire, construct, improve, maintain, and operate community facilities, including, but not limited to, community centers, libraries, theaters, museums, cultural facilities, and child care facilities.
 - a. The District operates the Isla Vista Community Center and Isla Vista Community Resource Building on behalf of the County of Santa Barbara. The District also supports a community garden at 892 Camino Del Sur, through a grant program.
7. Acquire, construct, improve, and maintain sidewalks, lighting, gutters, and trees to supplement the level of service already provided by either the County of Santa Barbara or County Service Area No. 31. The district shall not acquire, construct, improve, or maintain any work owned by another public agency unless that other public agency gives its written consent.



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- a. The District operates the Isla Vista Beautiful program that maintains the weeds in the sidewalks and build up of trash in the gutters. The District has completed multiple street light surveys and is working with the County to address County-controlled street lights that provide inadequate or inappropriate lighting, and has plans to address inadequate lighting due to absence of lights, or due to control of street lighting by SCE. Also, the District has plans to integrate sidewalk considerations in conjunction with planned implementation of a local area planning commission.

8. Abate graffiti.

- a. The District operates the Isla Vista Beautiful program that identifies and abates graffiti in the community. Phase I is a voluntary program. Phase II involves administrative citations.

Hopefully it should be clear that the District has many exciting current and future programs related to each activated power set forth in Government Code section 61250.

However, I must express the concern of the Board of Directors about the indicated purpose of the MSR as indicated in your January 14, 2020 letter. Our legal counsel has reviewed your correspondence and has raised a number of legal issues that strongly suggests that it is improper for LAFCO to use an MSR for the purpose of deactivating the District's powers as set forth in Government Code section 61250. From what I understand, LAFCO does not have the authority to deactivate a special district's power unilaterally, as a result of any review process.

First, LAFCO's purported authority to deactivate the District's powers comes from the unsigned, uncertified, unnumbered "resolution" attached to your correspondence. After reviewing LAFCO documents, it is clear that the "resolution" attached to your correspondence is not a resolution that was approved by LAFCO. Therefore, that "resolution" cannot provide LAFCO the authority purportedly exercised--or about to be exercised--per your correspondence.



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Second, our legal counsel identified Resolution 16-10, which is the only resolution considered and approved by LAFCO that contains language similar to that referenced in the draft resolution cited in your correspondence. Resolution 16-10 appears to be the resolution that LAFCO was required to pass in order to comply with Government Code section 61250. Nothing in Government Code section 61250 authorizes LAFCO to insert language into the required resolution relating to using the MSR process for possible deactivation of the District's powers. Notably, no mention is made in the accompanying staff report for Resolution 16-10 as to any source of LAFCO's authority in this regard. Moreover, our legal counsel was not able to find any other example of LAFCO using the deactivation language, or using the MSR process at all to make a determination to deactivate any special district's powers. The inclusion of this deactivation language in the Resolution does not appear to have any legal authority in support.

Third, our legal counsel reviewed the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, collected as Government Code sections 56000-57550, to find statutory support for LAFCO's indicated use of the MSR process to eventually deactivate the District's powers. Our legal counsel did not find any statutory support. While there is clear authority for LAFCO to request information, and a clear obligation for special districts to respond, for information like the information sought in your correspondence, it is also clear that the purpose of an MSR is to enable LAFCO to prepare and update a Sphere of Influence ("SOI") for an identified geographic area. An MSR is supposed to cover seven areas of information relevant to the SOI, and not just the subject of how activated powers are being used. We have not received any requests from LAFCO covering any of the other areas of information required in the MSR process. Further, the SOI process requires LAFCO to produce a report with respect to five areas, focusing on both current *and future* needs; your letter focuses only on current programs and services. Finally, any creation or revision to an SOI considered by LAFCO requires compliance with statutory notice requirements; so far, LAFCO has not provided any notice of an active SOI process for the geographic area that includes IVCS. State law does not support the idea that an MSR can end with LAFCO deactivating this District's statutorily authorized powers, especially not when basic due process and notice have not been provided.



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Fourth, our legal counsel searched for other statutory authorizations for LAFCO to deactivate the District's powers. While various methods and processes exist for new or existing special districts to apply for new powers, shift to different powers, or divest from an activated power altogether, our legal counsel did not find any other legal authority to allow for deactivation as described in your correspondence.

In conclusion, it does not appear that LAFCO has the authority to unilaterally deactivate any current District powers, as suggested in your correspondence. If you are aware of any other authority that supports the intent of LAFCO to deactivate any of the District's powers, please provide it to me and our legal counsel (copied on this letter) for consideration.

I hope that the information we have provided allows LAFCO to carry out its lawful functions, and provides clarity on the District's position with respect to any attempts by LAFCO to deactivate its statutorily activated powers, as set forth in Government Code section 61250.

Thank you,

Jonathan Abboud, General Manager